

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SYDNEY E. SMITH, III, <i>et al.</i> , Plaintiffs,)	
v.)	
UNITED STATES OF AMERICA,)	C.A. No. 02-264 Erie
)	District Judge McLaughlin
Defendant.)	Magistrate Judge Baxter

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on September 5, 2002, and was referred to United States Magistrate Judge Susan Paradise Baxter for a report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On July 23, 2004, this Court adopted the Magistrate Judge's report recommending that we grant in part and deny in part Defendant's motion for partial summary judgment. On March 31, 2005, Plaintiff filed a motion for partial summary judgment (Dkt. #54), and this case was again referred to Magistrate Judge Baxter for a report and recommendation. On May 6, 2005, Defendant filed a cross motion for partial summary judgment (Dkt. #61).

The Magistrate Judge's report and recommendation (Doc. #69), filed on July 22, 2005, recommended that the District Court grant the Defendant's motion for partial summary judgment and deny the Plaintiff's motion for partial summary judgment. The parties were allowed ten (10) days from the date of service to file objections. Objections were filed by Plaintiff on August 1, 2005 (Dkt. #73). After de novo review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 19th Day of September, 2005;

IT IS HEREBY ORDERED that the Defendant's Motion for Partial Summary Judgment (Doc. #61) is GRANTED, and Plaintiff's Motion for Partial Summary Judgment (Doc. #54) is DENIED.

The report and recommendation of Magistrate Judge Baxter, dated July 22, 2005, is adopted as the opinion of the court.

/s/ Sean J. McLaughlin
SEAN J. McLAUGHLIN
United States District Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record _____